

REMARKS

The present application was filed on August 18, 2000 with claims 1-26. In the outstanding final Office Action dated August 19, 2003, the Examiner: (i) rejected claims 1-6, 10-18 and 22-26 under 35 U.S.C. §102(b) as being anticipated by PCT No. WO 97/29443 to O'Brien et al. (hereinafter "O'Brien"); and (ii) rejected claims 7-9 and 19-21 under 35 U.S.C. §103(a) as being unpatentable over O'Brien in view of U.S. Patent No. 5,893,905 to Main et al. (hereinafter "Main").

With regard to the rejection of claims 1-6, 10-18 and 22-26 under 35 U.S.C. §102(b) as being anticipated by O'Brien, Applicants assert that such claims are patentable for at least the reasons that independent claims 1, 13, 25 and 26 from which claims 2-6, 10-12, 14-18 and 22-24 directly or indirectly depend, are patentable.

The service system set forth in O'Brien involves service level agreements (hereinafter "SLAs") and parameters indicative of system availability. The decision to provide services defined in an SLA is based on stored parameters, including estimations of capacity, and information that is not provided in real-time. Each time a service is provided and the resources of the system are allocated, information on how well the resources performed may be used to update the stored parameters.

Independent claims 1, 13, 25 and 26 of the present invention disclose techniques that, among other things, check "the consistency of the electronic service level agreement with respect to one or more existing electronic service level agreements previously committed to by the service provider." The invention discloses an analysis of proposed and existing SLAs to detect inconsistencies that can result from concurrent usage in hosting services. For example, inconsistencies in resource requirements may occur when two or more electronic SLAs require more CPU capacity than is available. As another example, inconsistencies may occur if throughput objects of a first service cause a failure to meet a response time of a second service.

The present invention discloses a system in which the consistency of a proposed SLA is checked with respect to one or more existing SLAs that were committed to by the service provider, while decisions to provide service in O'Brien are based on estimated stored parameters of past resource performance. As described on page 6, lines 16-24, of O'Brien, "a decision to provide a

service is based on stored parameters and not on real-time or near real-time information of the resources required to provide the service: there is no need to perform a detailed analysis of the resources available to the system before the decision is reached. The system bases its decisions on an estimation of the capacity of the system to provide a service at the requested time” (emphasis added). Therefore, in O’Brien, consideration is given to stored estimates of parameters, while the present invention performs a check for inconsistencies with actual existing SLAs that were committed to by the service provider. Thus, O’Brien fails to disclose a check for inconsistencies between a proposed SLA and one or more existing SLAs as described above.

For example, the required CPU capacity for a proposed SLA in the present invention would be checked against the required CPU capacities of the one or more actual existing SLAs that were previously committed to by the service provider. This provides an accurate assessment of whether the system can handle the requirements of the proposed SLA. However, in O’Brien, the required CPU capacity for the proposed SLA would be compared to an estimate of the available CPU capacity based on past resource performance in the system. However, if the available CPU capacity of the system is overestimated in accordance with the technique in O’Brien, O’Brien would be unable to support the proposed SLA which has already been committed to by the service provider.

This is explained on page 6, lines 28-31, of O’Brien where it states that “[a]lthough the lack of a detailed resource analysis during provisioning does increase the risk that once a service has been negotiated for it might not be possible to complete it, such failure can be dealt with acceptably . . .” This teaches away from the present invention, since the present invention checks resources of actual committed SLAs with requirements of a proposed SLA prior to allocation.

Advantageously, in the present invention, a validity check, which involves checking the consistency of the proposed SLA with respect to one or more existing SLAs, is performed after the construction of an SLA, but before system resource allocation. Should the proposed SLA fail the validity check, the proposed SLA may be reconstructed and checked again before it is provisioned. Since O’Brien considers estimated stored parameters, in order for a consistency check to occur against one or more actual existing SLAs, the system of O’Brien would be required to provision the proposed SLA and allocate resources of the system. Thus, O’Brien could not allow for

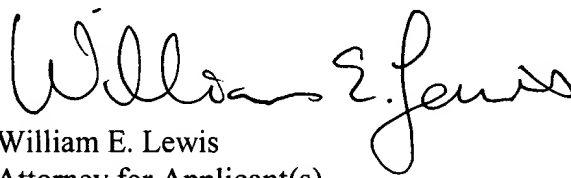
reconstruction of an SLA after checking consistencies with actual existing SLAs, and before allocation of the system resources.

In the previous response, Applicants statement that "O'Brien does not disclose a system able to determine how long the electronic service level agreement will be satisfied based on a workload forecasting and performance prediction technique," was not a "general allegation," but instead was meant to present elements of claim 11 that are not disclosed in O'Brien, such as workload forecasting and performance prediction techniques.

With regard to the rejection of claims 7-9 and 19-21 under 35 U.S.C. §103(a) as being unpatentable over O'Brien in view of Main, Applicants assert that such claims are patentable for at least the reasons that independent claims 1 and 13, from which claims 7-9 and 19-21 directly or indirectly depend, are patentable. The patentability of claims 1 and 13 is discussed above. Further, while the present invention checks consistencies in proposed SLAs with respect to existing SLAs, Main describes a process of enforcing SLAs. Accordingly, withdrawal of the rejection to claims 7-9 and 19-21 under §103(a) is therefore respectfully requested.

In view of the above, Applicants believe that claims 1-26 are in condition for allowance, and respectfully request withdrawal of the §102(b) and §103(a) rejections.

Respectfully submitted,



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Date: November 19, 2003